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**To:** Microsoft ATR  
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**Subject:** Microsoft Settlement

The proposed settlement should be rejected. I suggest four grounds for doing so.

First, the settlement does nothing to undo the damage done by Microsoft in the course of gaining and then maintaining its monopoly. It gained that monopoly in part through practices that were uncompetitive.

Second, the provisions for enforcement are inadequate. Should Microsoft be found in violation of the settlement, recourse seems to be, in essence, a continuation of the lengthy legal procedure that has characterized the case thus far. The sanctions Microsoft would face if it violated the judgement should be made more explicit. At the least, a finite procedure should be made explicit.

Third, the Internal Compliance Officer, as an employee of Microsoft, is more than likely to serve, not as a good faith proponent of the settlement, but as Microsoft's apologist to the Plaintiffs, the technical Committee, and the court, explaining why Microsoft followed the letter of the judgement while violating its spirit. This, I believe, follows from Microsoft's corporate culture. It is a central principle of software quality assurance that the person who determines whether a project or program is following the processes and procedures it needs to cannot be paid by or otherwise beholden to that project or program. The Internal Compliance Officer, in essence, serves to assure the quality of the final judgement. The same principle should apply.

Fourth, the selection of the technical committee is biased in Microsoft's favor. In the first place, the criteria for excluding people from consideration are too broad. Given Microsoft's broad reach across the information technology industries, how many qualified technical experts are there who have not worked for a competitor, given a broad definition of the term "competitor," and given that Microsoft, having the right to object, can use the broadest of definitions if it chooses to? Is it in the public's interest that this possibility be open? Is it in the public interest that Microsoft have the right to select one member, the right to object to another, and an indirect veto (through its chosen member) of the appointment of the third?

Please understand that I am not inherently against Microsoft. Indeed, I make my career largely through Microsoft products. But, as I have explained, I did not believe the proposed judgement serves the public's interest.

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